

made, may, like any other fact, be established by circumstantial evidence, still it is believed that such proof is entitled to the less influence, when it is manifest, that direct evidence upon the question was within reach. Such was the case here. John L. Hammond was upon the stand as the plaintiff's witness, and would no doubt have answered this question if it had been asked him.

But, independently of this view, I do not think it can be fairly inferred from the proof that this preference was given with a view, and under an expectation on the part of the Hammonds, of taking the benefit of the insolvent laws. Assuming it to have been shown, that at the date of the transaction, they were unable to pay their debts; that this was known to them and to McCormick and the bank, still it does not follow that they looked to an application for the benefit of the insolvent laws, as their only refuge. All these circumstances were conceded to have been proved in the case of *Crawford & Sellman vs. Taylor*, 6 G. & J. 323, and yet the Court of Appeals, said that they did not think the preference in that case, was given with such a view or expectation.

The witness, John L. Hammond, says, in this case, that he objected to the arrangement by which the bank was paid, because they expected to compound with their creditors. Now it seems to me, that an expectation to compound with creditors, and an expectation to escape from them by applying for the benefit of the insolvent laws, are very different things, and that both could not exist at the same time. What may have been the expectation of Wm. L. Hammond, the other partner, we are precluded from knowing satisfactorily: because, though the suit had been depending for years prior to his death, he was not examined. The case, therefore, turns upon the evidence of John L. Hammond, and the facts agreed upon by counsel, and I am not able to see in them, circumstances which satisfy me, that at the time of the transaction, the Hammonds contemplated applying for the benefit of the insolvent laws.

I have looked carefully into the cases of *Hickley vs. The Farmers and Merchants Bank*, 5 G. & J., 377. *Crawford & Sell-*